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June 20, 2006

AGENDA ITEM 3-A

TO: MEMBERS OF THE HEALTH BENEFITS COMMITTEE

I. SUBJECT: Assembly Bill 2667 (Baca)—
As Amended May 8, 2006

Health Care Providers Contract Considerations

II. PROGRAM: Legislation

III. RECOMMENDATION: Neutral, with suggested amendments

This bill is consistent with CalPERS' existing contracting authority and selection criteria. The language in the bill should be amended to make it clear that this bill is a permissive grant of express statutory authority.

IV. ANALYSIS:

This bill would require the Board of Administration of the California Public Employees Retirement System (CalPERS Board), the Department of Managed Health Care (DMHC), the California Department of Insurance (CDI), and the Department of Health Services (DHS), when contracting with or licensing certain entities, to consider various specified factors, including the entities' history of providing, or arranging to provide, health care services or benefits including services or benefits under the Medicare or Medicaid program.

Background

Current Law

The Public Employees' Medical and Hospital Care Act (PEMHCA) provides the Board with the authority to enter into contracts with health plans or with entities providing administrative services. Furthermore, PEMHCA allows the Board to withdraw its approval of health plans not able to pay claims or for other good cause.

CalPERS currently has statutory authority to contract with carriers offering health plans and has powers reasonably necessary to carry out that authority and responsibility, including the ability to adopt all necessary rules and regulations to

carry out PEMHCA provisions. PEMHCA also requires that carriers have operated successfully in the hospital and medical care fields prior to the contracting for, or approval of, health benefit plans.

In addition, PEMHCA regulations define minimum standards health benefits carriers must fulfill in order to be approved by the Board. These standards are as follows:

- Must be lawfully engaged in the business of supplying health benefits;
- Must have the financial resources, organizational facilities and experience in the health benefits field to carry out its obligations;
- In the case of carriers for service benefit plans, the Board shall be guided by such factors as:
    - Length of time the carrier has been in the prepaid health benefits field
    - Capacity of the carrier to effectively service claims of enrolled; employees and annuitants throughout the State;
    - General financial stability of the carrier as exhibited by the examination of the State Insurance Commission or other regulatory bodies; and
    - Extent to which the carrier underwrites other prepaid health benefits plans in California
- Must agree to keep financial and statistical records and furnish to the Board upon request;
- Must agree to permit the Board to audit and examine its records and accounts which pertain, directly or indirectly, to the plan;
- Must comply with requirements of the Board in the solicitation of enrollment of employees and annuitants and in any advertising; and
- Must agree to accept in payment of its prepaid charges, for health benefits for all employees and annuitants enrolled in the plan, the contribution of each employee and annuitant withheld from the salary or retirement allowance payable to him or her

Health Plan Licensing Process

The DMHC under the Knox Keene Act, is responsible for licensing Health Maintenance Organizations (HMOs) in California. HMOs may subcontract with a Pharmacy Benefits Manager (PBM) to provide prescription drug services. CalPERS has the right to approve these subcontractors as part of its contract negotiations with HMOs. PBMs operating as Medicare Part D prescription drug plans (PDP) have to meet Centers for Medicare and Medicaid Services (CMS) requirements, and may also have to comply with the Employee Retirement Income Security Act (ERISA) for their books of business.

The DHS has the authority to approve or deny licensure of nursing operators and hospitals. DHS is authorized to look at an applicant's performance history in California and across the nation. The CDI licenses and regulates insurance

companies, which include indemnity plans and some Preferred Provider Organizations (PPO).

Waiver of State License for PDPs

Although the MMA requires PDPs to be licensed by the states in which they operate, the MMA also grants broad waiver authority to CMS to waive the state licensure requirement for a PDP. Organizations that have filed an application for state licensure may appeal to CMS for a temporary waiver of up to 36 months. CMS will establish solvency standards for plans to operate under during the waiver and until the plans receive state licensure.

Proposed Changes

As it applies to CalPERS, this bill would require CalPERS to consider specific factors with respect to any entity that seeks to enter into a contract for the provision of health care benefits. Specifically, the bill would require CalPERS to consider the following criteria:

- Whether the applicant is of reputable and responsible character, including consideration of any available information that the applicant has demonstrated a pattern and practice of violations of state or federal laws and regulations; and
- Whether the applicant has the ability to provide, or arrange to provide for, health care benefits or services, including the following:
    - The applicant's history of substantial compliance with the requirements imposed under that license, and applicable federal laws, regulations, and requirements;
    - Any prior history, in any state, of providing, or arranging to provide for, health care services or benefits authorized to receive Medicare or Medicaid Program reimbursement;
    - Any prior history of providing, or arranging to provide for, health services as a licensed health professional or an individual or entity contracting with a health care service plan or insurer.

This bill would also allow the CalPERS Board to require the entity seeking to enter into a contract to provide health care benefits to furnish other information or documentation for the proper administration and enforcement of the licensing law.

Legislative History

2005 AB 78 (Pavley) – Would have established greater financial disclosure requirements for a pharmaceutical benefit manager in connection with a contract to provide pharmaceutical benefit services. Vetoed by Governor Schwarzenegger. The Governor stated he believed this bill would have

the unintended consequence of increasing drug costs to health plans and other purchasers without providing any real consumer benefit. *CalPERS' Position: Support*

2004 AB 1960 (Pavley) – Would have required a PBM to disclose to its purchasers and prospective purchasers specified information regarding its rebate arrangements. Also prohibited a PBM from substituting a prescribed medication, except under specified circumstances. This bill was vetoed by Governor Schwarzenegger. The Governor stated that the bill would increase drug costs to purchasers without providing any real consumer benefit. *CalPERS' Position: Support*

Chapter 751 (SB 436, Soto) – Repealed the three-year limitation on CalPERS to enter into contracts with specified entities offering health benefit plans. This bill also permitted CalPERS to contract for, or approve health benefit plans for employees and annuitants of contracting agencies that charge rates based on regional variations in the cost of health care services. *CalPERS' Position: Sponsor*

SB 574 (Albert) – As introduced, this bill would have eliminated the three-year limitation on contracts with health carriers and instead require CalPERS to contract for these plans through multi-year contracts. This bill would have also required any carrier that contracts with the Board to provide these plans to provide specified disease management programs and incentives for enrollment. This bill was subsequently amended and this language was removed and replaced with workers compensation language.

Issues

1. Arguments in Support

According to the sponsor, this bill is needed because the federal government has failed to adequately regulate new Medicare Part D plans. The sponsor is concerned and wants to address implementation problems with Medicare Part D, and the discrepancies with federal regulations for the operation of Medicare Part D. The sponsor cites stories of pharmacists waiting hours to get through to HMOs and the most vulnerable Californians going without needed medications.

The sponsor states that this bill would allow CalPERS, the DMHC, CDI and DHS to say "No" to an entity that has been a "bad actor" with Medicare Part D. The sponsor intends that this bill would give CalPERS express authority to deny contracts to unqualified PBMs.

The sponsor notes that California has regulatory authority over HMOs and insurers already licensed in California who have chosen to offer Medicare Part D

plans. California also has authority over entities with which Medi-Cal contracts and CalPERS contracts. This bill would give CalPERS, DMHC, CDI, and DHS express statutory authority to investigate the record of potential new licenses and contractors who operate in other states or are involved in other lines of business in California.

Organizations in Support: Health Access California (sponsor); Gray Panthers; American Federation of State, County and Municipal Employees (AFSCME); California Alliance for Retired Americans; The Greenling Institute; Congress of California Seniors, Senior Action Network

2. Arguments in Opposition

   There is no known opposition at this time.

3. The Bill is Consistent with CalPERS' Contracting Authority and Practice

   CalPERS currently has the existing authority to award a PBM contract through the Request for Proposal process. It is through this process that CalPERS already applies strict selection criteria to applicants and applies an approved scoring process when selecting a PBM.

   Under CalPERS existing contracting authority, the Board approves the CalPERS PBM Request for Proposal business model, which staff uses as the framework in the competitive bidding process to select a PBM. This business model requires more transparency about what prospective PBMs receive in discounts and rebates from manufacturers, and how they manage their lists of approved drugs. The bidding process includes CalPERS staff evaluation of bidders' retail and mail order networks, formularies, drug utilization programs, utilization management and customer service. Part of the criteria used in the PBM bidding process requires the PBM to support the employer subsidy for Medicare Part D, and requires health plan carriers and other entities to comply with state and federal laws. In addition, as part of the contracting selection criteria, PBMs must demonstrate their compliance with government subrogation claims. This model provides the Board with more information to consider when selecting a PBM than what is required in the bill.

   This bill does not appear to add any additional requirements or criteria to the CalPERS contract selection process, but rather codifies a portion of the criteria currently used.

4. Entities not Licensed in California

   Medicare Part D requires drug plans operating in California to be licensed by California, but grants Prescription Drug Plans (PDPs) a waiver of state licensure requirements until January 1, 2009. As a result, some entities offering PDP

services under Medicare Part D may be entering the California market for the first time. These entities are not currently licensed by the state of California or the Federal government, but instead are only required to follow ERISA in some situations. This bill would provide the express statutory authority to the appropriate entities to evaluate the past practice and character of a new licensee or contractor.

5. Legislative Policy Standards

The Board's Legislative Policy Standards suggest a neutral position on proposals which do not significantly affect the benefit interests of our stakeholders and which do not significantly impact CalPERS' benefits or the administration of the System. AB 2667 is consistent with CalPERS' existing contracting authority and selection criteria.

While the sponsor indicates that this bill is intended to give CalPERS additional authority to consider specified criteria when contracting with certain entities, the language in the bill should be amended to make it clear that this is not a requirement but instead a permissive grant of express statutory authority. The sponsor has indicated that they will amend the bill, but to date the specified language has not been included.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans, but is part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

Program Costs

AB 2667 would not impact CalPERS program costs.

Administrative Costs

AB 2667 would not impact CalPERS administrative costs.

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